

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KIM STEPHEN ELMER,

Defendant-Appellant.

UNPUBLISHED

October 3, 1997

No. 178598

Newaygo Circuit Court

LC No. 94-005668-FC

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by jury of criminal sexual conduct in the first degree (CSC I) in violation of MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). He was sentenced to fifteen to thirty years' imprisonment. We affirm.

First, defendant claims that the trial court erred by admitting other acts evidence in violation of MRE 404(b). Specifically, defendant challenges the admission of the prosecutor's exhibit one and certain testimony of Jeremy Heemstra. Defendant did not object to Heemstra's testimony, therefore, the challenge is unpreserved. Additionally, defendant's challenge to exhibit one on 404(b) grounds is unpreserved because defendant did not object at trial on such grounds. Furthermore, we are of the opinion that even if the trial court erred in admitting the evidence, any error was harmless in light of the properly admitted evidence.

Next, defendant raises a claim of ineffective assistance of counsel. There is a strong presumption that defendant was afforded effective assistance of counsel. *People v Hampton*, 176 Mich App 383, 385; 439 NW2d 365 (1989). Our review of the trial and *Ginther* hearing transcripts leads us to conclude that defendant has failed to overcome this presumption. Defense counsel testified that several of the alleged errors were tactical decisions. We will not second guess decisions of trial strategy. *People v Caballero*, 184 Mich App 636, 640; 459 NW2d 80 (1990). Also, in light of the evidence presented, we do not think that there is a reasonable probability that but for any of the alleged errors of counsel, the outcome would have been different. See *People v Pickens*, 446 Mich 298, 309, 326-327; 521 NW2d 797 (1994).

Finally, defendant challenges the scoring of the sentencing guidelines. We have reviewed defendant's claims and do not consider them to state a cognizable claim for relief. See *People v Mitchell*, 454 Mich 145, 178; 560 NW2d 600 (1997).

Affirmed.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Robert P. Young, Jr.